

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

SEAN DeCRANE

Case No. 1:16CV2647

Plaintiff,

vs.

Monday, April 8, 2019
2:32 p.m.

EDWARD ECKART,
JAMES VOTYPKA,
CHRISTOPHER R. CHUMITA,
THE CITY OF CLEVELAND,

Volume 2

Defendants.

TRANSCRIPT OF CONTINUED EVIDENTIARY HEARING PROCEEDINGS
BEFORE THE HONORABLE CHRISTOPHER A. BOYKO
UNITED STATES DISTRICT JUDGE

Official Court Reporter: Susan Trischan, RMR, CRR, FCRR, CRC
7-189 U.S. Court House
801 West Superior Avenue
Cleveland, Ohio 44113
216/357-7087

Proceedings recorded by mechanical stenography;
transcript produced by computer-aided transcription.

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25

1 MONDAY, APRIL 8, 2019, 2:32 P.M.

2 THE COURT: Thank you. Please be seated,
3 ladies and gentlemen.

4 THE CLERK: Your Honor, the case before the
14:32:54 5 Court this afternoon is the continuation of Sean DeCrane
6 versus Edward Eckart, Case Number 16CV2647.

7 THE COURT: All right. Thank you.

8 I see everybody who was here Friday is here
9 today.

14:33:04 10 We're continuing the evidentiary hearing
11 and testimony.

12 Mr. Dileno.

13 MR. DILENO: Thank you, Your Honor. We
14 would call Kim Roberson.

14:33:11 15 If I might, prior to the start of the
16 hearing, I think Mr. Chandra had indicated that
17 Mr. Bardwell, they may call him back to, I guess, respond
18 to maybe whatever testimony Ms. Roberson -- whatever
19 testimony will be elicited from her.

14:33:28 20 We would ask that he be separated from the
21 Court for that purpose.

22 THE COURT: Mr. Chandra.

23 MR. CHANDRA: Your Honor, we are -- his
24 assistance is invaluable during the course of the
14:33:38 25 hearing. He's familiar with the exhibits. He has been

1 working with us on this matter.

2 It would present a hardship for us under
3 those circumstances.

14:33:46

4 THE COURT: I'll allow him in the
5 courtroom, and I'll decide whether he should be recalled.

6 Let's go.

7 MR. DILENO: Yes. Thank you.

8 THE COURT: Ma'am, be sworn, please.

9 KIMBERLY ROBERSON,
10 of lawful age, a witness called by the Defendants,
11 being first duly sworn, was examined
12 and testified as follows:

13 THE COURT: Please have a seat.

14 Please pull that microphone towards you.

14:34:36

15 Thank you.

16 Mr. Vance, go ahead.

17 DIRECT EXAMINATION OF KIMBERLY ROBERSON

18 BY MR. VANCE:

14:34:42

19 Q. Good afternoon, Ms. Roberson. If you could please
20 state your name for the Court.

21 A. Kim Roberson.

22 Q. And what is your current position, Ms. Roberson?

23 A. Public Records Administrator for the City of
24 Cleveland.

14:34:49

25 Q. Do you work with any particular City department?

1 A. The Department of Law.

2 Q. And how long have you worked in the Department of
3 Law?

4 A. Almost 20 years.

14:34:59 5 Q. And have you worked in Public Records that entire
6 20 years or so?

7 A. Yes.

8 Q. Do you have any formal legal training?

9 A. No.

14:35:08 10 Q. How is it that you learned to do what you do within
11 Public Records?

12 A. My initial training was by the Chief Counsel Leslie
13 Milton when I started, and continual training from
14 various attorneys in the department based on the sections
14:35:22 15 that they work in.

16 Q. Mr. Chandra, in a declaration he filed with the
17 Court, stated that he worked closely with you in
18 Cleveland's Law Department.

19 Was Mr. Chandra someone that you took
14:35:34 20 direction from?

21 A. Yes.

22 Q. And what was your position in the summer of 2016?

23 A. My position was Public Records Administrator.

24 Q. Same thing?

14:35:41 25 A. Yes.

1 Q. And generally what were your duties at that time in
2 the summer of '16?

3 A. As Public Records Administrator, you receive the
4 public records request, you -- via mail, e-mail, fax --
14:35:56 5 stamp them the day that they are received.

6 You log them into a -- into the Public
7 Records Log with a number, the date that they submitted
8 their request, the date that we received it, a
9 description of what it is that they are seeking to
14:36:10 10 obtain.

11 Then we designate the department and the
12 assigned person from those departments that we're
13 supposed to get the records from, and the assigned person
14 in the Law Department that will be responsible for
14:36:23 15 reviewing those records.

16 Q. If you could, you should have an exhibit binder
17 there in front of you.

18 Flip to Exhibit E. This document's
19 previously been identified last Thursday as a public
14:36:39 20 records request that was submitted on behalf of
21 Mr. DeCrane and is related to this matter.

22 Do you see that Exhibit E?

23 A. Yes.

24 Q. Okay. And do you by chance know whose handwriting
14:36:51 25 is up there on the top right corner of that page?

1 A. That handwriting is mine.

2 Q. So in 2015, upon receipt of a public records
3 request like Exhibit E, what generally happens?

4 A. This request, we would normally stamp it and then
14:37:06 5 we put a public records request number on it based on the
6 number that comes up in the log, indicate what is being
7 requested, and forward it to the departments and to the
8 Law Department staff for any kind of notations that they
9 need to make prior to us going to those departments.

14:37:26 10 Get the records from those departments, and
11 have the Law Department, once those records come to the
12 Law Department, we redact what it is that we know how to
13 redact based on support staff. Then we give them to the
14 attorneys to review for any additional instructions that
14:37:42 15 they may have that they may not have provided to us to
16 put into the log, or via e-mail, and give to them to
17 review for release.

18 Q. And you mentioned a log a couple times, I think,
19 now.

14:37:58 20 Could you go to Exhibit A, please? I
21 realize this font is a little small, but in an effort to
22 get it condensed to a page, could you kind of tell me
23 what Exhibit A is?

24 A. This is a -- this is the Public Records Log, this
14:38:27 25 is an excerpt from it. It's not the entire log. But

1 this is the log in which we would normally log
2 information into the system that we receive.

3 Q. And you mentioned that one of the things you do is
4 log in instructions from the attorneys into the log?

14:38:44 5 A. Yes.

6 Q. Where generally would those be put?

7 A. In the comment area.

8 Q. Okay.

9 A. As such are you seeking for specifics?

14:38:56 10 Q. No, I don't want you to tell me what the attorneys
11 told you to put into the log, but I just want to know
12 exactly where the attorney instructions would go.

13 A. The instructions would go in the comment area.

14 Q. And you mentioned this is not a complete log, this
14:39:10 15 is just an excerpt from a handful of rows from the log.

16 Is that --

17 A. Yes. That is correct.

18 Q. Okay. And if you could flip to the second page of
19 that document.

14:39:22 20 A. Okay.

21 Q. That earlier public records request that we looked
22 at, Exhibit E, that was public records request 15-2220.

23 Do you see that there on the second page of
24 Exhibit A?

14:39:39 25 A. Yes, I do.

1 Q. And that's something that then in turn gets put
2 into the log, the information from 15-2220?

3 A. Right. Any special instructions, yes.

14:39:57 4 Q. Now, is this log from Exhibit A, is this still
5 maintained by the City or does the City still use that
6 log?

7 A. No, we do not.

8 Q. You've gone to a new system?

9 A. Right. It's a system called Gov Q and A where we
14:40:09 10 enter the request into the system. The system
11 automatically gives it a reference number which
12 previously would have been a public records request
13 number.

14 Based on how the request is submitted, it
14:40:22 15 may go directly to the department, or we will have to
16 assign it directly from the Law Department.

17 Q. And there was some testimony last week that the
18 log, at least as of 2016, was maintained on SharePoint,
19 is that accurate?

14:40:36 20 A. That is accurate.

21 Q. And SharePoint, just as my understanding, and
22 correct me if I'm wrong, is that was a document such that
23 it could be accessed and then updated?

24 A. Yes.

14:40:45 25 Q. And then everybody would be able to see the updates

1 at the time they occurred?

2 A. Yes.

3 Q. Such that you weren't updating --

4 MR. CHANDRA: Objection to leading.

14:40:54 5 THE COURT: We can move it along.

6 MR. VANCE: Sure.

7 THE COURT: There's no jury, so let's go.

8 BY MR. VANCE:

9 Q. So is the case then that the log was constantly
14:41:02 10 being updated, is that right?

11 A. That is correct.

12 Q. Now, are you familiar with Brian Bardwell?

13 A. Yes.

14 Q. And who is he?

14:41:10 15 A. Brian Bardwell was the intern that came to the City
16 of Cleveland to work in the summer.

17 Q. And do you remember what summer that was?

18 A. 2016.

19 Q. And what involvement, if any, did you have with his
14:41:29 20 internship at the City?

21 A. The attorneys that are responsible for assigning
22 the interns had asked if he could help in any way with
23 public records, and I said yes.

24 And we assigned him to work on the older
14:41:50 25 requests to see if they were open, closed, and what the

1 current status was on them.

2 Q. So did you actually direct him as to an assignment
3 relative to that?

14:41:59

4 A. Once the attorney gave him the assignment for him
5 to come to Public Records, yes.

6 Q. Okay. And what was it that you asked him
7 specifically to work on?

8 A. To start on the far drawers that were behind my
9 area, to start on '15s.

14:42:12

10 And he would take a box of records at a
11 time and go to his area and work on them to find out
12 which ones were open, closed, or needed additional
13 records from other departments.

14 Q. And when you say "'15s," do you mean 2015 requests?

14:42:29

15 A. 2015 and 2016, if he was able to get to it.

16 Q. And did you at any point in time ever direct him to
17 review 2014 requests?

18 A. No.

19 Q. What about earlier requests, for example, 2012 or
20 2013 public records requests, did you ever direct him to
21 do anything with those?

14:42:42

22 A. Those requests have been boxed up and put into the
23 subbasement.

24 Q. Okay. So the filing -- you referenced filing
25 cabinets that were by your area, you said?

14:42:52

1 A. I have a cubicle area. The '14, 2014 records were
2 in my area in a file cabinet. The '15s and '16s were
3 behind or, I should say, in front of my cubicle area
4 against the wall.

14:43:08 5 Q. So the actual '12 and '13, they weren't even in
6 those filing cabinets?

7 A. No, sir.

8 Q. How is it that you know -- besides the fact that
9 that's what you directed him to do -- that he was working
14:43:24 10 on the 2015 public records requests?

11 A. Say that again, please.

12 Q. Besides you -- you directed him to work on the 2015
13 requests?

14 A. That is correct.

14:43:33 15 Q. Which you testified to.

16 How else do you know that that's what it
17 was that he was doing?

18 A. I would see him take the files directly from the
19 drawers to his area. I'm assuming that's what he was
14:43:45 20 working on since those were the instructions.

21 Other than that, I happened to be there one
22 evening and I walked around my area and I saw him
23 standing at the 2015s with a notepad.

24 Q. Okay. And do you recall what was part of that
14:44:03 25 notepad at all?

1 A. I could see the listing of numbers and I could tell
2 that they were '15s, and he was making checkmarks.

3 Q. Did you even ever discuss the '14 or the '12 or the
4 '13 requests?

14:44:14 5 A. I do not recall any conversation about '12 or '13.

6 He did ask me about the '14s, and I told
7 him those were in my area and he did not have to concern
8 hisself with them.

9 Q. So if Mr. Bardwell submitted a declaration that
14:44:32 10 said, "I was assigned to review records requests from
11 2014 and earlier to determine whether any closed requests
12 of 2014 and earlier were still sitting in the City's
13 filing cabinets for open requests," do you consider that
14 to be an accurate statement?

14:44:46 15 A. No.

16 Q. And same, similar question, if Mr. Bardwell
17 testified that he was responsible for reviewing the 2012
18 or the 2013 public records requests, would you consider
19 that to be an accurate statement?

14:45:00 20 A. No.

21 Q. Now, those filing cabinets that you referenced,
22 what exactly is it that are included in those? What --
23 are they open, closed files?

24 A. A combination of the two.

14:45:13 25 They're either open or they're still -- or

1 they're closed.

2 When we receive a public records request,
3 we make a folder for it, and all the correspondence
4 pertaining to that request goes into the folder.

14:45:27 5 That's correspondence between the
6 departments, the correspondence between support staff and
7 attorneys, correspondence from attorneys to support
8 staff, any issues or concerns that need to be made in
9 regards to the request based on the Law Department's
14:45:42 10 involvement.

11 When there's disagreements in regards to
12 what is released and what is not released based on the
13 records that are received from the departments,
14 they -- there's notations in there because I'm normally
14:46:00 15 copied on all the correspondence that goes on within the
16 Law Department pertaining to a public records request so
17 that I know where everything stands at that time.

18 Q. So if Mr. DeCrane's public records request from
19 2015 was still open, would that have been something that
14:46:19 20 would have been in the filing cabinets there?

21 A. Yes.

22 Q. And if we could flip to Exhibit B, what is Exhibit
23 B, Ms. Roberson?

24 A. Exhibit B is an e-mail that I received from our IT
14:46:49 25 person in the Law Department providing me a listing of

1 what was on the computer of Mr. Bardwell that he was
2 working on, and the documents that were on that computer.

3 Q. And there's, by my count, four attachments as part
4 of that e-mail, is that right?

14:47:09 5 A. That is correct.

6 Q. Okay. So what I'd like to do is let's walk through
7 those attachments one by one. And they're here as part
8 of Exhibit B.

9 A. There's one -- oh.

14:47:21 10 Q. So the first, the first attachment, it's just
11 titled "15.docx"?

12 A. Yes.

13 Q. You should have a blue piece of paper separating
14 each one so --

14:47:30 15 A. Oh, okay. Okay.

16 Q. That first document there, tell me what that is or
17 what you see there.

18 A. This is a listing of public record numbers that was
19 apparently generated by Mr. Bardwell.

14:47:52 20 This is the -- this is what I saw him at
21 the computer -- at the file cabinet working on.

22 Q. Okay. So when you saw him at the file, the '15
23 file cabinet, you saw him with a list --

24 A. That looked like this, yes, and he was checking off
14:48:07 25 things, checking off numbers, apparently.

1 I couldn't tell what he was writing
2 specifically, but I do recall seeing this as -- from a
3 glance, the numbers.

4 Q. And I see at least beginning with the first page,
14:48:24 5 15-1 all the way to the end it's 15-3048. And they
6 appear to generally go sequentially.

7 And I'm hoping maybe just for the Court's
8 benefit you could explain the -- how the Public Records
9 Department numbers public records requests.

14:48:42 10 A. We start off with the year and 001 and forward.

11 Q. Okay. So all these references here to 15-001,
12 15-0037, those are all -- that 15 represents 2015?

13 A. That is correct.

14 Q. Okay. If you go to the next attachment, it's
14:49:08 15 titled -- and this would be after the blue piece of
16 paper -- "MCO text final."

17 A. The next one --

18 Q. It says "Policy matters Ohio" at the top?

19 A. Yes.

14:49:23 20 Q. Is it your understanding that that is the MCO text
21 final document that was sent to you by Mr. Guzman?

22 A. Yes, it was.

23 Q. Okay. And then if you'd go to the next attachment
24 which is Mr. Guzman's e-mail, Exhibit B, PRR log.xlsx.

14:49:51 25 Do you see the document there that's after

1 that blue sheet of paper?

2 A. Okay.

3 Q. What is that document, the PRR Log?

14:50:13

4 A. The information, some of the information definitely
5 looks like it came from the Public Records Log, but it
6 looks like it had been manipulated.

7 There's some information that we never put
8 in there like that.

14:50:29

9 Q. Okay. So the document that's attached as part of
10 the binder, that's not the complete Public Records Log --

11 A. No, it is not.

12 Q. -- that Mr. Guzman sent you, right?

13 A. No, it's an excerpt from the log.

14 Q. That's a --

14:50:36

15 MR. CHANDRA: Your Honor, I just want to
16 lodge an objection based on the Rule of Completeness.

17 We don't know if this is the entire
18 document or excerpts from the document.

14:50:48

19 THE COURT: No, we don't, but she can
20 answer that question.

21 So go ahead.

22 BY MR. VANCE:

14:50:56

23 Q. Ms. Roberson, the document that we're discussing
24 now, is this the complete Public Records Log that
25 Mr. Guzman sent you?

1 A. This is not a complete log. It is excerpts from it
2 but, I mean, the log was -- this is, what's in this
3 binder is an excerpt.

4 He did send me the entire log.

14:51:12 5 Q. Okay.

6 MR. CHANDRA: I would like to relodge that
7 objection, Your Honor.

8 THE COURT: The objection's noted.

9 Go ahead.

14:51:20 10 BY MR. VANCE:

11 Q. That actual log itself, to print something like
12 that out, that would be a sizable, sizable document,
13 would it not?

14 A. Yes, it would be.

14:51:28 15 Q. And just so we can get a sense, the document that
16 you're looking at, it's got the rows, the row numbers on
17 the side there.

18 You see that?

19 A. Yes.

14:51:38 20 Q. And then it's got the various columns?

21 A. Yes.

22 Q. So one column or one row actually tracks over the
23 course of a handful of sheets of paper?

24 A. Yes.

14:51:56 25 Q. So each sheet of paper just reflects the different

1 columns still --

2 THE COURT: Let her testify.

3 MR. VANCE: Yes, sure.

4 BY MR. VANCE:

14:52:03 5 Q. So just explain that a little bit more in detail
6 how exactly this public records -- what exactly is the
7 information on each of these pages here and how they
8 correlate.

9 A. Okay. I'm saying off of this log here that's here,
14:52:16 10 it says a public records number, it says a type, it says
11 requester and request date, request -- date received, the
12 request description, department, division, division
13 contact assigned to, if there was a Court contact, if we
14 were going to the Clerk of Court's office; comments,
14:52:43 15 status, modified, modified by, and item type and path,
16 which everything from -- I should say into Q, the
17 computer designates that information once you enter it
18 into the system.

19 But this does not look like the log in its
14:53:06 20 entirety from the City of Cleveland. We don't have a
21 type that we have put in here between the PR number and
22 requester.

23 Q. So you believe that must have been something that
24 was added at some point?

14:53:23 25 A. Yes.

1 Q. Okay. And that particular log, if you go back to
2 the first page, do you understand whether or not that log
3 that was sent to you by Mr. Guzman included the public
4 records request 15-2220?

14:53:44 5 A. Yes, it does.

6 Q. If you could flip to the last document there, after
7 the blue sheet of paper.

8 A. Okay.

9 Q. What is your understanding of that document,
14:54:03 10 Ms. Roberson?

11 A. This is a document that I received from our IT
12 person of the information that was on Brian Bardwell's
13 computer.

14 It is totally -- I mean, it does have
14:54:20 15 information from the Public Records Log, but is totally
16 different. It looks like it had been reorganized and
17 manipulated for his purposes.

18 Q. Okay.

19 MR. CHANDRA: Your Honor, objection again
14:54:32 20 based on Rule of Completeness.

21 THE COURT: Well, let's forget about the
22 Rule of Completeness and talk about whether it's
23 accurate, Mr. Vance.

24 I mean, she's testifying that this somehow
14:54:45 25 is changed and she testified about other documents not in

1 the form that she remembers them, so is there an
2 explanation for that?

3 MR. VANCE: Sure.

4 BY MR. VANCE:

14:54:53 5 Q. As to the last document, Ms. Roberson, when you're
6 talking about that looking different, are you talking
7 about that looking different from what?

8 A. It looks different from "type," "key." It says
9 "response sent" is usually over there as a comment, not
14:55:14 10 as a column.

11 It has the "requester's name" and "date"
12 and the "date received."

13 It has "request," but I don't know what the
14 "key" indicates. I don't know what the "type" indicates
14:55:33 15 or the "response sent," which doesn't have
16 anything -- clarifications in there. It just has a zero
17 in the columns and an R somewhere, in some of the
18 columns.

19 Q. Okay. Just so we're on the same page, you're
14:55:45 20 talking about the final attachment there, correct?

21 A. The one -- yes. The final --

22 Q. Okay.

23 A. There's another -- it -- yes, it is the final
24 attachment.

14:55:59 25 THE COURT: Ms. Roberson, Ms. Roberson, my

1 question is does it contain the same information that you
2 would find if it were in the order that it should be?

3 THE WITNESS: It does not contain all the
4 information.

14:56:12 5 WELL, it does contain the information, but
6 it contains more information than what's in our log,
7 which means he put additional information in there.

8 THE COURT: Go ahead, Mr. Vance.

9 MR. VANCE: I think I appreciate the
14:56:25 10 confusion here.

11 MR. CHANDRA: Objection to the assertion
12 without any foundation, Your Honor.

13 THE COURT: Let's have Mr. Vance try and
14 clear this up for us.

14:56:31 15 MR. VANCE: Sure.

16 BY MR. VANCE:

17 Q. It seems as though are you comparing this document
18 to another document in terms of the content that's in it?

19 A. Yes, I'm comparing it to the public records request
14:56:41 20 that's maintained by the Law Department.

21 Q. So the actual Public Records Log, an example of
22 which was Exhibit A that we discussed?

23 A. Correct.

24 Q. So the question then I guess I have for you is the
14:56:52 25 attachment, what's here with the blacked out sheet that

1 you're looking at, the last attachment --

2 A. Yes.

3 Q. -- is that a complete copy of what was sent to you
4 by Mr. Guzman?

14:57:00 5 A. Yes, it was.

6 Q. Okay. And that last attachment, that -- tell me it
7 appears to address -- you tell me what public records
8 request that last attachment addresses, if you would.

9 A. What this last --

14:57:22 10 Q. The last, correct.

11 A. What does it address?

12 Q. Yes. What public records request specifically.

13 I don't need all of them, but is it a
14 certain year or --

14:57:33 15 A. It's not a response. It's the year 2015, but it's
16 not a response that the Law Department submitted to
17 anyone.

18 Q. Okay. But the document itself appears to include
19 the 2015 public records requests?

14:57:43 20 A. Yes.

21 Q. And do you know if the 15-2220 request submitted on
22 Mr. DeCrane's behalf is included on this particular
23 attachment?

24 A. Yes, it is.

14:58:25 25 Q. And is it your understanding that Mr. Bardwell had

1 this on his computer, the computer he was working on?

2 A. That is correct.

3 MR. CHANDRA: Objection. Foundation, Your
4 Honor.

14:58:32 5 THE COURT: You know, it's not necessary.
6 Overruled.

7 BY MR. VANCE:

8 Q. If you could flip to Exhibit F, please,
9 Ms. Roberson.

14:59:05 10 Could you tell me what Exhibit F is,
11 please?

12 A. Exhibit F is a copy of a request from our Public
13 Records Log from the year 2000 -- entered as 2001 which
14 indicates that it's the request number, which at that
14:59:25 15 time we did not indicate it by year, the requester, the
16 date of the request, the date received, the request
17 description, the department, the status, and whether it
18 was open, closed or hold -- on hold.

19 Q. And how about Exhibit G, could you tell me what
14:59:44 20 Exhibit G is, please?

21 A. Exhibit G is a copy of a sheet from the Public
22 Records Log from 2004.

23 Everything's been redacted so there's no
24 details for me to refer to except at the bottom it says
15:00:10 25 "Attorney/Client privilege, work product of counsel."

1 Q. Do you know why the difference between the 2001 and
2 the 2004 log?

3 A. That was by the direction of the Law Department
4 director at the time.

15:00:25 5 Q. And do you recall which Law Director that was?

6 A. The "for attorney/client privilege," Director
7 Chandra Subodh -- Subodh Chandra, I'm sorry.

8 Q. So it's your understanding that Mr. Chandra had
9 directed the Public Records Department to make the
15:00:46 10 entirety of the Public Records Log attorney/client
11 privilege, work product of counsel?

12 MR. CHANDRA: Object, Your Honor.

13 A. Yes.

14 THE COURT: Overruled.

15:00:54 15 BY MR. VANCE:

16 Q. And these, these logs, I mean, explain to me
17 what -- so you have Exhibit A, Exhibit F and Exhibit G
18 are all logs.

19 A. You said A?

15:01:04 20 Q. Exhibit A, the first one we went over.

21 A. Okay.

22 Q. Exhibit F and Exhibit G.

23 You've described all of them as the Public
24 Records Log?

15:01:22 25 A. Correct.

1 Q. Are they all just basically the same document, but
2 different years?

3 A. They are the same document, different years, that
4 is correct.

15:01:35 5 The only difference is one's
6 attorney/client privilege and the others are not.

7 Q. And if you could flip to Exhibit D for me for the
8 moment.

9 A. Did you say B?

15:01:49 10 Q. D as in --

11 A. Dog.

12 Q. -- David, dog.

13 A. David, okay.

14 Okay.

15:01:56 15 Q. Could you tell me what Exhibit D is, please?

16 A. Exhibit D is a response from a public records
17 request that we received from Brian Bardwell.

18 We responded on October 6th, 2017. He had
19 asked for a copy of the Public Records Log, and it's our
15:02:21 20 response to him.

21 Q. And did you provide him the entirety of the Public
22 Records Log?

23 A. We did not provide the entirety of the Public
24 Records Log.

15:02:32 25 We provided everything up until comments

1 based on that information being of a confidential nature
2 to the Law Department.

3 Q. Generally speaking, can you tell me a little bit
4 about maybe what confidential information may be included
15:02:51 5 in the log?

6 A. Okay. On the log, there's times that we receive
7 requests, and the Chiefs of the Law Department will look
8 at the request and -- or I will even know based on the
9 nature of the request that it's a potential litigation.
15:03:08 10 So if it's a potential litigation, that is notated in the
11 log.

12 If there are special instructions that are
13 provided to the support staff in regards to that request,
14 we indicate that in the log as well. Those are comments
15:03:26 15 that go back from support staff to the attorneys.

16 If the attorneys have a disagreement in
17 regards to what is considered responsive and not
18 responsive, there's communication that goes on and we
19 make those notations in the log where it might be a
15:03:44 20 communication from the Director to one of the Chiefs.

21 And there's constant conversation back and
22 forth. There might be conversation in regards to the
23 drafts that are prepared. We have -- normally have more
24 than one person look at a draft that might be from an
15:04:07 25 attorney.

1 Q. When you say "draft," draft what?

2 A. A draft response to a public records request.

3 And there's a decision of what is being
4 considered, something to produce as responsive versus
15:04:20 5 what should not be produced as responsive, and sometimes
6 the attorneys agree and they talk about it sometimes via
7 e-mail, sometimes verbally, but they'll make a notation
8 to us that they'll get back to us at a certain time.

9 And the departments also will stress their
15:04:38 10 concerns regarding any public record request responsive
11 documents that they're forwarding if they feel that
12 there's a major concern regarding it.

13 Q. And you referred to special instructions.

14 Who would special instructions be coming
15:04:51 15 from?

16 A. Various attorneys in the Law Department or, I
17 should say, in regards to that request, the attorney that
18 is assigned to review that request.

19 Q. And the special instructions are given to you?

15:05:04 20 A. Yes.

21 Q. Or to somebody on your staff?

22 A. That is correct.

23 And normally if they put it in as an e-mail
24 and since there's more than one support staff, we just
15:05:13 25 want everybody to be aware of those special notations in

1 case they happen to come across that request because
2 somebody might be out of the office or they received a
3 follow-up phone call from someone.

4 MR. VANCE: I have no further questions at
15:05:31 5 this time.

6 THE COURT: Thank you, Mr. Vance.

7 Mr. Chandra.

8 MR. CHANDRA: Thank you, Your Honor.

9 CROSS-EXAMINATION OF KIMBERLY ROBERSON

15:05:56 10 BY MR. CHANDRA:

11 Q. Good afternoon, Ms. Roberson.

12 A. Good afternoon.

13 Q. We're well-acquainted from our work together years
14 ago.

15:06:10 15 A. Yes.

16 Q. Right?

17 Okay. You would agree with me that in the
18 notations field for the public records request 15, I
19 believe it is, 2220, the one regarding the subject matter
15:06:43 20 of Sean DeCrane, that there is no confidential

21 information from attorneys contained in the field that
22 can be used for that purpose, correct?

23 A. I could not say that unless I actually saw the
24 field.

15:07:00 25 Q. Okay. So as you sit here in court today, you

1 cannot tell Judge Boyko that there is any confidential or
2 attorney/client privilege or attorney work product
3 information related to the Sean DeCrane-related public
4 records request that is a part of the Public Records Log
15:07:27 5 that you contend Brian Bardwell accessed, correct?

6 A. I can't say that.

7 Q. Okay. Am I going too fast for the court reporter?

8 All right. So I'd like to turn you, if I
9 could, to the exhibit binder with the numbers in it. You
15:07:57 10 should have two exhibit binders in front of you. We're
11 going to get you the other one here.

12 MR. VANCE: Could we also get a copy,
13 please?

14 MR. CHANDRA: I think it's the one you got
15:08:10 15 last week.

16 MR. VANCE: We never got one last week.

17 MR. CHANDRA: Oh, okay. I don't think I
18 have one. There you go.

19 MR. VANCE: Thank you.

15:08:17 20 BY MR. CHANDRA:

21 Q. Okay. So it's, I think, the same thing as in
22 yours, but if you could take a look at --

23 THE COURT: Be nice if I had one, too.

24 MR. CHANDRA: Oh, I'm sorry, Judge.

15:08:49 25 Just a moment, Your Honor, I'm sorry.

1 What we can do, I think, is work off of the
2 defense exhibit binder.

3 Okay. All right.

15:09:36

4 Can I put it on the Elmo, Judge? Sorry
5 about that.

6 THE COURT: The Elmo?

7 MR. CHANDRA: Yeah. For some reason we're
8 short on the binder here.

9 THE COURT: If you need this for the Elmo,
10 go ahead.

11 MR. CHANDRA: Yeah, that would be great.

12 THE COURT: As long as I can see it on the
13 screen, go ahead.

15:10:06

14 MR. CHANDRA: Now my binder is gone, my
15 tabs are gone now.

16 BY MR. CHANDRA:

17 Q. Okay. So what I'd like to do, Ms. Roberson, is
18 show you the declaration that you submitted to the Court
19 previously, or at least that the City's counsel submitted
20 on your behalf.

15:10:24

21 And Elmos have changed a little bit since I
22 last used one.

23 THE CLERK: It will focus by itself.

24 MR. CHANDRA: Oh, it will. All right.

15:10:51

25 Okay.

1 BY MR. CHANDRA:

2 Q. So if you could take a look at this, and you signed
3 this under penalty of perjury, right? You did this under
4 oath?

15:10:58 5 A. Yes.

6 Q. Okay. So if you take a look at Paragraph 9 of this
7 document, and is it going to auto focus?

8 Can you read it okay? Seems a little out
9 of focus.

15:11:16 10 There we go. Got it.

11 THE CLERK: Leave it on auto focus.

12 MR. CHANDRA: Okay.

13 BY MR. CHANDRA:

14 Q. Could you read that paragraph out loud, please?

15:11:26 15 A. Sure. "During his internship at the City,
16 Mr. Bardwell became privy to confidential information,
17 including, but not limited to, how long it typically
18 takes the City to respond to public records requests, the
19 Department of Law's involvement with the requests, and
15:11:46 20 the manner in which the City processes requests."

21 Q. Okay. So did you come up with the verbiage for
22 Paragraph 9? Did you draft this verbiage?

23 A. No, I did not.

24 Q. Okay. And fair to say that this was drafted for
15:11:59 25 you by the City's lawyers?

1 A. That is correct.

2 Q. All right. So let's take each of the things in
3 turn that you say are included, but not limited to, in
4 this confidential information.

15:12:13 5 A. Okay.

6 Q. Now, the Public Records Log that the City
7 maintains, includes a field for when the record was
8 received, correct -- or when the records request was
9 received, correct?

15:12:30 10 A. Yes.

11 Q. And it also contains a date field for when the
12 public records request was complied with, if it was
13 complied with, correct?

14 A. That is correct.

15:12:41 15 Q. And that time span then naturally would include the
16 time period that it took for the City to respond to the
17 public records request, correct?

18 A. Yes.

19 Q. And from time to time, people, including -- you saw
15:12:59 20 the example of Brian Bardwell making a records request
21 for the log.

22 From time to time, people do request the
23 Public Records Log as to whatever it is you are willing
24 to give them, right? People request that?

15:13:12 25 A. People do request the log.

1 Q. And that log, when you comply with it, does include
2 the date of a request and the date of compliance,
3 correct?

4 A. It indicates if it was open or closed.

15:13:29 5 It doesn't always have the date that it was
6 responded to.

7 Q. Okay. But would you agree with me that there is
8 nothing secret about when the public records request was
9 received by the Law Department, correct?

15:13:44 10 A. There is nothing privy, no.

11 Q. Okay. And there's nothing secret about when it is
12 that that particular request was complied with, correct?

13 A. It depends upon the information, additional
14 information that may have been in that comment box.

15:14:01 15 Q. Right. And I'm not asking about that.

16 A. Okay.

17 Q. Okay? I'm just asking about when that particular
18 request is considered closed by the City.

19 A. When it is considered closed by the City, we could
15:14:14 20 tell you that it's closed without providing any of the
21 comments there.

22 Q. No, and I understand. I'm not asking about the
23 comments.

24 I'm asking about the column and the fields
15:14:24 25 that you just testified to about when the public records

1 request was closed.

2 Can we agree that that is not confidential
3 information?

4 A. It is not confidential information.

15:14:37 5 Q. Okay. So let's turn then -- and so, for example,
6 if a media organization were -- just take this as a
7 hypothetical -- a media organization were interested in
8 writing a story about how long it is that the City
9 typically takes to respond to public records requests, it
15:14:58 10 would be able to obtain public records from the City,
11 including potentially the Public Records Log, to try to
12 make that determination and calculate those numbers over
13 a span of time.

14 Would you agree with that?

15:15:13 15 A. Not in its entirety.

16 Q. Right. But at least as to the narrow issue of when
17 records requests came in and when they were completed,
18 according to the City's own records, correct?

19 A. We process the request, and when we complete a
15:15:31 20 request, we make notations as we go along.

21 It doesn't -- it doesn't maintain history.

22 Q. What --

23 THE COURT: Ms. Roberson, you're -- I don't
24 think you're addressing the question.

15:15:44 25 Let's talk about dates.

1 THE WITNESS: Okay.

2 THE COURT: You have a date that the record
3 is requested.

4 THE WITNESS: Yes.

15:15:49 5 THE COURT: And then you have a date that
6 it is considered closed.

7 THE WITNESS: That is correct.

8 THE COURT: Okay. I believe what
9 Mr. Chandra is asking is that is not confidential, the
10 date request, the date closed, is that correct?

11 THE WITNESS: That is correct. However,
12 there's no field. It just says "Date closed."

13 THE COURT: Understood.

14 Mr. Chandra.

15:16:09 15 MR. CHANDRA: Thank you, Your Honor.

16 BY MR. CHANDRA:

17 Q. All right. So moving on to the next item here, the
18 Department of Law's involvement with the requests, you'd
19 agree with me that it's no secret that at the City of
15:16:23 20 Cleveland, the process for facilitating responses to
21 public records requests is housed within the City of
22 Cleveland's Law Department, correct?

23 A. Yes.

24 Q. And we've already established you're not an
15:16:36 25 attorney, correct?

1 A. That is correct.

2 Q. And the function that you perform does not require
3 you to exercise legal judgment in any way, correct?

4 A. Correct.

15:16:47 5 Q. All right. And so the fact that the Department of
6 Law is involved with the requests at the City of
7 Cleveland is a matter of at least public knowledge to
8 people who -- most of the people who send in public
9 records requests to the City.

15:17:05 10 Fair enough?

11 A. Somewhat.

12 Q. Okay. In other words, some people do send requests
13 directly to a department or a division, right, trying to
14 bypass the City of Cleveland Law Department?

15:17:18 15 A. They try, but it doesn't always work.

16 Q. Okay.

17 A. But they do try.

18 Q. Let's make sure we don't talk over each other --

19 A. Okay.

15:17:26 20 Q. -- so that the court reporter can get a good
21 transcript.

22 And in addition, the fact that some lawyers
23 sometimes -- let me rephrase.

24 The fact that sometimes Assistant Law
15:17:46 25 Directors are involved in giving legal advice as to

1 whether or not certain records should be produced, the
2 fact that lawyers are sometimes involved in that is also
3 not a secret to people who send in public records
4 requests on a regular basis, right?

15:18:00 5 A. We do not refer requesters to the attorneys that
6 are assigned to review those records.

7 Q. Well, sometimes those attorneys get involved, say,
8 in mediation processes at the Supreme Court of Ohio or in
9 Congress --

15:18:19 10 A. That -- I'm sorry. Go ahead.

11 Q. I'm sorry, did you say they have?

12 A. Uhm-uhm. I was letting you finish.

13 Q. Okay. Why don't we just stop there?

14 A. Okay.

15:18:29 15 Q. Did you hear the question?

16 A. No, I did not.

17 Q. All right. Let me rephrase then.

18 Sometimes Assistant Law Directors are

19 involved in mediation processes, either at the Ohio

15:18:41 20 Supreme Court or in the Ohio Court of Claims, the Court

21 of Common Pleas here in Cuyahoga County, or the Eighth

22 District, correct?

23 A. Yes.

24 Q. And that wouldn't be a secret to the litigants on

15:18:56 25 the other side of those cases, right, the involvement of

1 the Law Department?

2 A. (Witness nods).

3 Q. All right. And from time to time when you and the
4 other people in the Public Records Department -- and by
15:19:08 5 the way, all three of you are nonlawyers, right?

6 A. Correct.

7 Q. And all three of you sometimes field phone calls
8 from people who have requested public records asking
9 where their records are, right?

15:19:22 10 A. Correct.

11 Q. And from time to time, you tell them that attorneys
12 in the Law Department are reviewing those documents for
13 potential redactions or as to whether those records
14 should be produced, correct?

15:19:35 15 A. I will tell them that it is in the reviewing
16 process in the Law Department.

17 Q. Okay. So again, that's not a secret or
18 confidential, correct?

19 A. Correct.

15:19:50 20 Q. And this last point, "The manner in which the City
21 processes requests," from Paragraph 9 of your
22 declaration, you see that?

23 A. Yes.

24 Q. Now, when you're referring to the manner, what are
15:20:06 25 you referring to in that sentence?

1 Do you know?

2 A. Okay. The manner in which the City processes the
3 requests, meaning the Law Department's involvement in
4 that request.

15:20:20 5 Q. So it's the same thing that we just discussed?

6 A. Um-hmm.

7 Q. Okay. And in general, there's nothing confidential
8 about that, right?

9 A. For the most part, I would say.

15:20:32 10 Q. Okay. All right. And I'd like you, if you would,
11 to look at the exhibit on -- I'm going to show you this
12 news article that ran on March 1st, 2018 and this is
13 Exhibit 24, Tab 24.

14 MR. CHANDRA: And it's actually in the
15:21:10 15 Court record, Your Honor, as Page ID Number 2497 and
16 document 57-23.

17 BY MR. CHANDRA:

18 Q. So this news article that ran, did you wind up
19 seeing this article that ran about the controversy in
15:21:24 20 this case over the secrecy of public records?

21 A. Yes.

22 Q. Okay. And if you look toward the bottom here and
23 the paragraph, could you please read the paragraph here
24 that's bracketed that says, "Law Director Barbara
15:21:45 25 Langhenry"?

1 A. "Law Director Barbara Langhenry said that she would
2 not agree that all information was confidential. The
3 records, though, include some notes from attorneys and
4 communications with clients that she would defend as
15:21:55 5 private."

6 Q. Okay. So and you have no reason as you sit here
7 today to contradict Ms. Langhenry's assertion, correct?

8 A. No.

9 Q. All right. So I'd like you to take a look at the
15:22:14 10 exhibit that you were shown earlier by Mr. Vance, Exhibit
11 E, and I'm going to put that on the screen as well.

12 You remember looking at this document?

13 A. Yes.

14 Q. Now, what's the date on this public records
15:22:40 15 request?

16 A. August 25th, 2015.

17 Q. And your handwriting labeled it as PR number,
18 public records request number 15-2220, correct?

19 A. Yes.

15:22:55 20 Q. Now, you testified earlier that you would number
21 the public records requests in numerical order as they
22 were received, correct?

23 A. As I received them.

24 Q. All right. So it would be fair to infer from the
15:23:08 25 face of this document that by around August 25th, 2015 or

1 thereabouts when you received this, that by that point in
2 2015 there were already 2,220 public records requests
3 received in the Cleveland Law Department or by the City
4 of Cleveland, correct?

15:23:29 5 A. Yes.

6 Q. All right. And if you look at the requester's
7 name, who is the requester?

8 A. W. Craig Bashein.

9 Q. Okay. And that's B-A-S-H-E-I-N, and the company
15:23:44 10 name is Bashein and Bashein, correct?

11 A. That is correct.

12 Q. So there is nothing there to indicate that this
13 request is coming from Sean DeCrane, at least on those
14 fields, correct?

15:23:58 15 A. That's correct.

16 Q. And the Public Records Log of the City of Cleveland
17 would also contain the name of the requester as -- it
18 should contain the name as W. Craig Bashein, correct?

19 A. Yes.

15:24:15 20 Q. All right. So would you agree with me that from
21 the face of the request, you cannot tell, as the Public
22 Records Administrator for the City of Cleveland, that
23 this request is submitted on behalf of Sean DeCrane, with
24 this counsel, as adverse to the City regarding Sean
15:24:41 25 DeCrane, correct?

1 A. That's not something that I look for. I mean,
2 that's not any of my business.

3 Q. Okay. You don't care who the requester is,
4 correct?

15:24:49 5 A. Right. The requester can ask for anything that
6 they want.

7 Q. Okay. And from time to time you might get lawyers
8 or law firms asking for public documents where they don't
9 represent the people who are named in the request,
15:25:01 10 correct?

11 A. That is correct.

12 Q. All right. And you testified a few moments ago
13 that by around August 25th, 2015, you already had 2,220
14 requests, but can we agree that many of those requests
15:25:23 15 would often contain numerous subparts to them so it
16 wouldn't be just for one document or one category of
17 documents, correct?

18 A. Correct.

19 Q. So as a consequence, you could be looking at many
15:25:38 20 thousands -- not just 2,220 by August 25th of 2015 --
21 many thousands of categories of documents that would have
22 come in already by that point, correct?

23 A. Yes.

24 Q. And I want to ask you just by way of background a
15:25:56 25 little bit of what -- about what was going on at the

1 Cleveland Law Department at this time.

2 This time period, August 25th, 2015 --
3 which I think based on the time frame you've testified
4 about would have been about a year or so before Brian
15:26:15 5 Bardwell was an intern, correct?

6 A. Yes.

7 Q. Okay. So by August 25th, 2015, about how long was
8 this, to the best of your recollection, after the
9 shooting death of Tamir Rice?

15:26:39 10 Do you recall that being in or around
11 November of 2014?

12 A. Yes.

13 Q. Okay. And is it fair to say that from November,
14 2014 forward, even through this time period, that the
15:26:50 15 City of Cleveland was bombarded with public records
16 requests, not just locally, but from around the world
17 related to that case?

18 A. Yes.

19 Q. So is it fair to say that in this time period,
15:27:02 20 there was an unusually high number of public records
21 requests that was out of the ordinary from what you had
22 experienced up to that point in your career at the City?

23 A. Yes.

24 Q. Okay. And is it fair to say that in addition to
15:27:19 25 receiving those requests, that you as the Public Records

1 Administrator and the other Public Records staff that
2 work with you, were receiving numerous follow-up
3 telephone calls from the requesters related to the Tamir
4 Rice case demanding compliance with the records requests?

15:27:38

5 A. Yes.

6 Q. And those weren't just coming from City of
7 Cleveland media but were coming from all around the
8 world, correct?

9 A. Yes.

15:27:45

10 Q. All right. So is it your sworn testimony that at
11 least by -- let's talk about August of 2015 -- that the
12 City of Cleveland was caught up with all of its public
13 records requests from 2012 and 2013 by August of 2015?

14 A. The only way I would know that is to go back and
15 look.

15:28:13

16 Q. And no one -- well, let me withdraw that.

17 You've not done that as part of the
18 preparation for your testimony today, correct?

19 A. No.

15:28:22

20 Q. And can we also agree that by 2014 -- or by this
21 time frame, August of 2015, that all of the public
22 records requests that came in from 2014 were all
23 completely complied with?

24 A. No, I can't say that either.

15:28:43

25 Q. And can you -- are you also in a position to

1 testify under oath to Judge Boyko that by the summer of
2 2016, that all public records requests that came in from
3 2014 had been fully complied with by the City of
4 Cleveland Law Department?

15:29:01 5 A. No, they had not been.

6 Q. Okay. So it is fair to say that there would have
7 been a backlog?

8 By the time Brian Bardwell became an intern
9 in the summer of 2016, there would have remained a
10 backlog of requests at least from 2014 that had not yet
11 been complied with, correct?

12 A. Yes.

13 Q. And many of those related to the Tamir Rice case,
14 correct?

15:29:26 15 A. Possibly.

16 Q. Okay. Well, in fact, Ms. Roberson, you took leave
17 from the City. I'm not going to ask you for any
18 confidential health information, but I want to try to
19 establish a time frame here.

15:29:41 20 You took leave from the City at what point?
21 Approximately what month to what month?

22 A. December 9th, 2014 through May of 2015.

23 Q. Okay. So for that period that you were out
24 on -- that was a medical-related leave, is that correct?

15:30:03 25 A. That is correct.

1 Q. All right. In the time period that you left, is it
2 fair to say that the backlog that the City of Cleveland
3 was experiencing in complying to -- with the public
4 records requests that it had received already, continued
15:30:17 5 to increase because you weren't there to facilitate it?

6 I'm not faulting you for that.

7 A. No.

8 Q. But it's a fact, isn't it?

9 A. There was a backlog, yes.

15:30:26 10 Q. And that backlog actually increased as a result of
11 your absence, correct?

12 A. Yes.

13 Q. Right. And when you returned from your medical
14 leave -- in the spring of 2015, you said it was?

15:30:38 15 A. Yes.

16 Q. -- the number of uncomplained with public records
17 requests had actually been greater than when you left,
18 correct?

19 A. Yes.

15:30:50 20 Q. All right. How much greater, approximately?

21 And I'm not faulting you. I'm just asking
22 for facts.

23 A. I don't know.

24 MR. VANCE: Objection to this whole line of
15:31:01 25 questioning. At some point where are we going?

1 MR. CHANDRA: I'm getting there.

2 THE COURT: Could have been asking the same
3 thing on your end.

4 I'm allowing a lot more than really should
15:31:10 5 be coming in, but I want to see if anybody can tie it
6 together at the very end.

7 Overruled.

8 Go ahead, Mr. Chandra.

9 A. The reason I don't know that is because by me not
15:31:16 10 being there, the other staff members were working on
11 things that were most current, and that's the reason why
12 we needed assistance from an intern to assist in the
13 backlog of '15.

14 Q. Right. But also needed -- you needed assistance
15:31:31 15 for a backlog that remained from 2014 and 2016, isn't
16 that correct?

17 A. There wasn't as much in '14, and that was something
18 that I wanted to handle directly because I was there.

19 Q. And there was also a backlog for 2013 of uncomplied
15:31:46 20 public records requests, correct?

21 A. There may have been some.

22 Q. Okay. How many?

23 A. I don't know.

24 Q. And how about 2012?

15:31:52 25 A. I don't know.

1 Q. But there was a backlog, right?

2 A. Normally we've gone back to the -- to the various
3 requesters and asked them if they were still interested
4 in those requests, responsive documents.

15:32:06 5 If they were not, we considered them closed
6 so there may have been a backlog but we attempted to
7 address them all.

8 Q. And, in fact, do you recall that you sent me such a
9 request, asking whether that a long-pending public
15:32:19 10 records request, whether I still wanted compliance with
11 it years later?

12 Do you recall that?

13 A. Yeah, it wasn't me, but yes.

14 Q. Okay. And you recall the answer was yes?

15:32:26 15 A. Um-hmm.

16 Q. Even though it was from years earlier?

17 A. Um-hmm.

18 Q. And the answer to that was yes, so that the record
19 is clear?

15:32:35 20 A. Yes.

21 Q. All right. So it would be fair to say that by the
22 time Brian Bardwell arrived in the summer of 2016 to
23 assist you with the public records request compliance
24 process -- which you asked him to do, correct?

15:32:54 25 A. I -- I accepted his help through the attorney that

1 asked me.

2 Q. Okay. And at that time there was a backlog of
3 uncomplied with public records requests going back to
4 2012 at least, correct?

15:33:14 5 A. I can't say that.

6 Q. And you can't not say that either?

7 A. And I can't not say that, but I'm not going -- it's
8 under oath.

9 I don't know.

15:33:23 10 Q. Okay.

11 A. But I do know that there was '14s, but you're
12 talking about '12 and '13s, that I -- I would have to go
13 back and look at the records.

14 Q. Okay. Would you agree that if there was such a
15 backlog going back to 2012, it would have made no sense
16 logically in terms of the City's compliance with public
17 records requests obligations to simply ignore older
18 requests and skip ahead to 2015?

19 A. Instructions are to address the '15s and 16s.

15:34:03 20 I was willing to do the '14s because I was
21 there and I had more involvement with those files.

22 Q. What about the '13s and '12s?

23 A. If they were there, we would have gone back to them
24 as well.

15:34:15 25 Q. All right. So meaning you would have assigned

1 those to Brian Bardwell?

2 A. No, not necessarily.

3 Q. All right. So did you ever discuss with Brian
4 Bardwell the Sean DeCrane-related public records requests
15:34:34 5 from W. Craig Bashein specifically?

6 A. No.

7 Q. And so as you sit here testifying to Judge Boyko
8 today, you have no information that would suggest that
9 Brian Bardwell saw any confidential information related
15:34:53 10 to Sean DeCrane's public records request, isn't that
11 correct?

12 A. No, I cannot say that either because he took files
13 out of the file cabinets, took them to his area to go
14 through those files --

15:35:05 15 Q. You --

16 A. -- for the year of 2015.

17 Q. You cannot testify from your personal knowledge
18 that Brian Bardwell took the Sean DeCrane-related file
19 from the 2015 filing cabinet and took it back to his
15:35:26 20 desk, correct?

21 A. I mean, I didn't see him do it.

22 Q. So you have no personal knowledge that he did do
23 it, correct?

24 A. He took all the files from the drawers so he had
15:35:34 25 access to the --

1 THE COURT: You're not answering the
2 question, Ms. Roberson.

3 Do you have personal knowledge that he did
4 it, yes or no?

15:35:41 5 THE WITNESS: No, I did not see him
6 actually do it.

7 THE COURT: Thank you.

8 BY MR. CHANDRA:

9 Q. All right. And in addition to that, you have no
15:35:46 10 information that he saw or accessed any privileged or
11 attorney work product information related to Sean
12 DeCrane, correct?

13 You have no personal knowledge of that,
14 correct?

15:36:00 15 A. Personal knowledge, no.

16 Q. All right. Now, let's turn to the Exhibit B from
17 the defense binder. And that is the e-mail from Alberto
18 Guzman.

19 Do you see that on your screen?

15:36:39 20 A. Yes, I do.

21 Q. Okay. So you have no personal knowledge that the
22 documents attached to Mr. Guzman's e-mail were actually
23 documents that were on the computer that Brian Bardwell
24 was working on when he was at the City?

15:37:00 25 You have no personal knowledge of that,

1 correct?

2 A. Personal knowledge in what manner? Because I did
3 see the properties where it was created and modified by a
4 law clerk during that time frame.

15:37:14 5 Q. That's not my question, was it?

6 A. That's the personal knowledge that I have.

7 Q. You have personal knowledge -- my question was do
8 you have personal knowledge that the documents attached
9 to Mr. Guzman's e-mail here in the exhibit binder were
10 documents that Brian Bardwell had on the computer he was
11 working on?

12 My question was about Brian Bardwell; not
13 about law clerks generally.

14 A. Okay. Well, I can only go by the information that
15 was given to me by the IT person.

16 Q. Okay. So you --

17 A. No, I don't have any personal knowledge myself.

18 Q. Okay. And so you also have no personal knowledge
19 about whether, what's attached to this exhibit, is a
20 complete rendition of all of the information that was on
21 that computer, whoever it was used by?

22 A. The only document that I saw was the one that I had
23 referred to earlier.

24 And I did see that.

15:38:07 25 Q. What document are you talking about?

1 A. The document that had the listing of all the '15 PR
2 numbers.

3 Q. Okay.

4 A. I actually saw that in his hand.

15:38:15 5 Q. Okay. In whose hand?

6 A. In Brian Bardwell's hand.

7 Q. Okay. So this document that lists off public
8 records requests from 15-0001 forward, right, that is the
9 document you're talking about?

15:38:34 10 A. Yes.

11 Q. Now, how many days did Brian Bardwell work on
12 assisting you in helping catch up the City's compliance
13 with public records requests?

14 A. I have no idea.

15:38:43 15 Q. Do you have any basis for contradicting
16 Mr. Bardwell's testimony if he testified that it was just
17 two or three days?

18 A. He would know. I wouldn't.

19 Q. Okay. So you don't have any basis for
15:38:55 20 contradicting his testimony on that point, right?

21 We agree on that?

22 A. Um-hmm.

23 Q. And, in fact --

24 THE COURT: Is that a yes?

15:39:03 25 THE WITNESS: Yes.

1 THE COURT: Okay.

2 Q. You do have a basis for contradicting --

3 THE COURT: No, I wanted to make sure for
4 the record instead of "Um-hmm."

15:39:09 5 MR. CHANDRA: Thank you, Your Honor.

6 THE WITNESS: Sorry.

7 BY MR. CHANDRA:

8 Q. And you were the one who pulled Brian Bardwell off
9 of the project, correct?

15:39:22 10 A. I am not the one that pulled Brian Bardwell off of
11 the project.

12 Q. But did you --

13 A. I had no authority.

14 Q. Okay. Fair enough. But you conveyed to Brian
15:39:30 15 Bardwell that he was being pulled off the project,
16 correct?

17 A. I did not convey to Brian Bardwell that he was
18 being pulled off a project.

19 Q. You have no recollection of doing that?

15:39:38 20 A. No.

21 He came to me and said what was going on,
22 and I told him that I wasn't the person that he needed to
23 speak with; he needed to speak to the attorney that was
24 over the interns for the summer.

15:39:50 25 Q. Do you have any knowledge of who communicated to

1 Brian Bardwell that he was being pulled off of the public
2 records compliance project?

3 A. No.

15:40:04

4 Q. And were you -- did you gain any information about
5 why it is that he was pulled off of that project?

6 A. There were several things.

7 Q. Go ahead.

15:40:16

8 A. The first one was he never signed a
9 confidentiality. They did not do a background check on
10 him. And based on them not having those documents, they
11 wanted to remove him from doing any further public
12 records requests.

13 Q. Who is "they"?

14 A. The law administration.

15:40:30

15 Q. Who?

16 A. Well, the first person -- I'm not sure of the exact
17 person, but I know that the Director of Law and the Chief
18 Counsel and Jillian, I can't remember her last name,
19 were -- was involved in his removal of working on public
20 records.

15:40:51

21 Q. And you came to learn it was because Mr. Bardwell
22 had successfully sued the City regarding public records
23 compliance some ten years earlier, correct?

24 A. No, I --

15:41:01

25 MR. VANCE: Objection. Misstates her

1 testimony.

2 THE COURT: She can answer.

3 A. I didn't know that.

4 MR. CHANDRA: Okay. I'm wrapping up, Your
15:41:11 5 Honor.

6 THE COURT: All right.

7 BY MR. CHANDRA:

8 Q. For whatever number of days it is that Mr. Bardwell
9 was working with you --

15:41:26 10 A. Okay.

11 Q. -- on helping clear public records backlog for
12 whatever time period, would you agree that part of that
13 process was that he was filling out a tracking sheet as
14 to each record he was helping close or records request he
15:41:42 15 was helping close, and then giving those to you to log
16 into the public records database?

17 A. That may have been his objection, but I never
18 received anything from him.

19 Q. So it's your testimony from your recollection that
15:41:56 20 Mr. Bardwell never handed you any tracking sheets to
21 assist you in catching up the Public Records Log?

22 A. Correct.

23 Q. What's your recollection of how it is that he would
24 communicate to you that he had completed work?

15:42:12 25 A. There was little communication between Brian

1 Bardwell and myself.

2 Q. Okay. So based on the fact that there was little
3 communication, as you sit here today, you can't tell
4 Judge Boyko what public records requests he completed and
15:42:28 5 which ones he didn't?

6 A. That is correct.

7 Q. All right. This computer that you've described in
8 your testimony as Brian Bardwell's computer, do you know
9 whether that computer was left completely idle at the Law
15:42:53 10 Department and not used by anybody else from the time
11 period that Mr. Bardwell was a law clerk in the summer of
12 2016 and whatever time period it was that it was being
13 checked to see what documents he had used on there?

14 A. No, I don't personally know.

15:43:07 15 Q. And when was the computer, to your knowledge,
16 checked for that purpose?

17 A. I would not know that.

18 I would have to speak to our IT
19 representative for the Law Department.

15:43:18 20 Q. Okay. So if I could have you look at Exhibit B
21 again, you see this e-mail from Alberto Guzman?

22 A. Yes.

23 Q. What date is that e-mail?

24 A. August the 2nd, 2016.

15:43:32 25 Q. So for some reason, Alberto Guzman was sending you

1 an e-mail with the subject "Bardwell files," correct?

2 A. That is correct.

3 Q. Why?

4 A. Because at the -- at the time they wanted to know

15:43:49 5 what he was working on because he had not signed papers,

6 confidentiality papers, and there was no background check

7 had been completed on him.

8 Q. Who is "they"?

9 A. The administration.

15:44:00 10 Q. Who?

11 A. The City of Cleveland administration.

12 Q. There must have been a human being who told you

13 this.

14 What's that person's name?

15:44:06 15 A. Okay. Barbara Langhenry, the Director; human

16 resources, I don't know who specifically in that

17 Department of Human Resources, but the information came

18 from Jillian. I think her last name is Dinehart.

19 Q. Do you know if someone else used that computer

15:44:22 20 after Mr. Bardwell did?

21 A. No, I do not know.

22 Q. Do you know where that computer is kept?

23 A. No, I do not know.

24 Q. So you see the e-mail asks, "Take a look and see if

15:44:37 25 you want me to give him access to them"?

1 A. That is correct.

2 Q. Who is the "Him"?

3 A. Brian Bardwell.

4 Q. Okay. So why is it that you were making -- or that
15:44:47 5 inquiry was being made of you, to your knowledge?

6 Was there some context from the
7 conversation you were having with Guzman?

8 A. This is again coming from the Law Department
9 Director and Chief Counsel and Jillian, to make sure of
15:45:04 10 what it was that he was doing on the computers.

11 Q. But, Ms. Roberson, the question is coming to you
12 from Mr. Guzman as to whether or not you want Mr. Guzman
13 to give Mr. Bardwell access to those documents, correct?

14 A. That is correct.

15:45:21 15 Q. So was there -- is it possible that there was a
16 request from Mr. Bardwell to get access to certain
17 documents?

18 A. Mr. Bardwell came to me and said, "I don't have
19 access to some documents," and that's when I told him
15:45:37 20 again to go to Jillian Dinehart, who was responsible for
21 him.

22 Q. All right.

23 A. His assignments.

24 Q. Let's move on.

15:45:50 25 I'd like you to take a look at Exhibit G in

1 the binder, please.

2 And let's turn it this way. And this was
3 the document that you said was a Public Records Request
4 Log from around 2004, correct?

15:46:08 5 A. Yes.

6 Q. And the -- you see the big redaction there,
7 correct?

8 A. Yes.

9 Q. But you'd agree that the date of the request and
15:46:16 10 the date that it was received, what the request is, those
11 are all a matter -- and even the requester, those are all
12 a matter of public record and are not attorney/client
13 privileged information, correct?

14 A. I would have said that.

15:46:29 15 Q. Okay. So let's take a look at Exhibit D, and we
16 can see here from Exhibit D -- first, we're going to try
17 to focus it a little bit here -- this is the public
18 records request from Brian Bardwell that is records
19 request 17-1917, correct?

15:47:15 20 A. Yes.

21 Q. And Mr. Vance was asking you questions about this,
22 correct?

23 A. Yes.

24 Q. You have no knowledge of whether this request was
15:47:23 25 made on Brian Bardwell's behalf individually or on behalf

1 of anybody else, correct?

2 A. There's an e-mail behind all of that that says his
3 name and his e-mail address.

4 Q. Right. I'm just saying you don't know whether he
15:47:44 5 was making this on someone else's behalf or on his own
6 behalf, right?

7 You don't know one way or the other, right?

8 A. Correct. Yes.

9 Q. And to the best of your knowledge, did you comply
15:47:58 10 with this records request completely?

11 A. Yes.

12 Q. Well, if you could take a look at the -- read
13 through the e-mail and see if that affects your testimony
14 on that point.

15:48:37 15 Tell me when you're ready.

16 A. I'm ready.

17 Q. Okay. So would you agree that you did not produce
18 the full log that would have contained all information
19 regarding all public records requests?

15:48:49 20 A. All the information was not provided based on
21 attorney/client privilege, work product.

22 Q. Okay. And in the end -- the records production
23 that you did here, do you know whether or not any
24 information regarding Sean DeCrane was provided?

15:49:10 25 A. No, I do not.

1 Q. Do you know whether any confidential information
2 regarding Sean DeCrane was provided?

3 A. I doubt it.

4 Q. All right.

15:49:18 5 MR. CHANDRA: One moment, Your Honor.

6 THE COURT: Go ahead.

7 MR. CHANDRA: If I could just have a moment
8 to check my notes, Your Honor, I think we may be
9 finished.

15:49:39 10 BY MR. CHANDRA:

11 Q. Oh, a couple more points.

12 You were describing in your testimony a
13 little while ago about the process that the City of
14 Cleveland follows for complying with public records
15 requests.

15:49:50 16 That process is also described on the
17 City's own website, correct?

18 A. Yes.

19 Q. Would you agree that your job is stressful because
15:50:13 20 of the backlog of requests?

21 A. It has been.

22 Q. And the persistent follow-up requests from people
23 frustrated that they're not getting their records?

24 A. We all are.

15:50:26 25 Q. All right. And there aren't enough people to

1 handle the volume of requests coming in?

2 A. At the time there, that is correct.

3 Q. Meaning back in 2016, 2015?

4 A. Correct.

15:50:46 5 Q. My last question is simply this: As you sit here
6 testifying to Judge Boyko today, do you have any personal
7 knowledge that Brian Bardwell acquired any confidential
8 information related to the Sean DeCrane public records
9 requests during his time at the City?

15:51:07 10 A. I have no personal knowledge to that effect.

11 Q. And you also have no personal knowledge that he
12 shared any such information with The Chandra Law Firm or
13 with Sean DeCrane, correct?

14 A. Correct.

15:51:21 15 MR. CHANDRA: All right. I have no further
16 questions, Your Honor.

17 THE COURT: Thank you, Mr. Chandra.

18 Mr. Vance.

19 MR. VANCE: Yes. Thank you.

15:51:31 20 REDIRECT EXAMINATION OF KIMBERLY ROBERSON

21 BY MR. VANCE:

22 Q. Ms. Roberson, you just referenced or a reference
23 was just made to the City's website on public records and
24 the processes described there relative to public records.

15:52:01 25 Do you recall that testimony?

1 A. Yes.

2 Q. Anywhere on that website does it say anything about
3 specific disagreements that the internal Department of
4 Law may have relative to responses?

15:52:13 5 A. No, it does not.

6 Q. Does it say anything about draft responses that the
7 City's attorneys draft that you testified to earlier?

8 A. No.

9 Q. Is that information ever publicly available?

15:52:25 10 A. No.

11 Q. Do you consider that information to be
12 confidential?

13 A. Yes.

14 Q. In terms of how long it typically takes to respond
15:52:34 15 to a public records request, what are the types of things
16 that impact that?

17 A. Obtain the records from the departments, making
18 sure that they are providing all the responsive records
19 to that request.

15:52:53 20 When we receive those responsive documents,
21 the support staff redacts based on the knowledge that
22 they have, and then we turn them over to the attorney for
23 the final review and any additional redactions that need
24 to be made.

15:53:11 25 If there's been correspondence between the

1 departments or within our, our department,
2 attorney-to-attorney, then that is also discussed as
3 well.

4 There's more than one person that usually
15:53:25 5 looks at a draft just to make sure. If there's
6 disagreements in what should be released and what
7 shouldn't be released, that is discussed as well by the
8 attorneys --

9 THE COURT: Mr. Vance.

15:53:37 10 A. -- and by the Director as well.

11 THE COURT: I do have a question.

12 Ms. Roberson, if someone in your department
13 redacts information and then it goes to the Law
14 Department you said for further redaction?

15:53:50 15 THE WITNESS: The attorney.

16 THE COURT: The attorneys, I'm sorry.

17 Do the attorneys or have they ever in your
18 experience unredacted something that was redacted in your
19 department?

15:54:02 20 THE WITNESS: Yes.

21 THE COURT: It does happen?

22 THE WITNESS: Yes, it does within our
23 department, yes.

24 THE COURT: Thank you.

15:54:07 25 Go ahead, Mr. Vance.

1 MR. VANCE: Thank you.

2 BY MR. VANCE:

3 Q. Exhibit B, if you could flip to Exhibit B, briefly.

4 A. Okay.

15:54:21 5 Q. I believe you testified to earlier that Exhibit B
6 was an e-mail you received from Alberto Guzman with what
7 he stated were documents from the computer Brian Bardwell
8 was using?

9 A. Yes.

15:54:31 10 Q. Do you have any reason to doubt Mr. Guzman's
11 statements?

12 A. No.

13 Q. All right. If you could go to -- do you have the
14 binder, the other binder?

15:54:43 15 A. Yes.

16 Q. Exhibit 28, and I'll put it up on the Elmo.

17 A. Okay.

18 Q. Do you see Exhibit 28 there?

19 A. Yes.

15:55:07 20 Q. What is Exhibit 28, Ms. Roberson?

21 A. It's a declaration from Alberto Guzman in regards
22 to him being the supervisor of hardware evaluations at
23 the City of Cleveland Department of Law and the equipment
24 that was used by Brian Bardwell while he was an intern
15:55:31 25 with the City of Cleveland.

1 Q. And there's multiple documents there; there's pages
2 behind that declaration?

3 A. Yes.

4 Q. Just if you would, just flip through those very
15:55:40 5 briefly, if you could take a look at those.

6 Sorry, for the --

7 A. Okay.

8 Q. Let's focus on this one first.

9 MR. CHANDRA: Your Honor, again objection
15:56:10 10 based on Rule of Completeness here.

11 MR. VANCE: The declaration itself actually
12 says that these are excerpts from documents that were on
13 Mr. Bardwell's computer.

14 BY MR. VANCE:

15:56:18 15 Q. The first one here, if we could, it says -- there's
16 a number four there.

17 Do you see that?

18 A. Yes.

19 Q. Does that look at all similar to the fourth
15:56:25 20 attachment to that e-mail that Mr. Guzman sent you in
21 Exhibit B?

22 A. In Exhibit B? The very last one.

23 Q. The last attachment, the fourth attachment --

24 A. Right.

15:56:58 25 Q. -- to Exhibit B.

1 And then if you could go to the first
2 document between -- behind the Guzman declaration,
3 please. It's got the "1" up in the top right corner?

4 A. Yes.

15:57:13 5 Q. Does that look like any document that was attached
6 to Exhibit B that Mr. Guzman sent you?

7 A. Yes.

8 Q. And what document does that look like to you?

9 A. This is a listing of the document of all the
15:57:28 10 numbers that I saw Mr. Bardwell working on.

11 Q. The first attachment to that Exhibit B, right?

12 A. Right after Alberto Guzman, this, this one here?

13 Q. Yes.

14 A. Yes.

15:57:42 15 Q. And that's the first attachment to Exhibit B, that
16 '15 document?

17 A. Yes.

18 Q. Do you have any reason to doubt Mr. Guzman's
19 declaration?

15:57:53 20 A. None at all.

21 Q. Ms. Roberson, do you know approximately what time
22 frame it was that Mr. Chandra deemed the entire Public
23 Records Log attorney privilege and work product?

24 A. It had to be, I would say, his second year as Law
15:58:29 25 Director.

1 Q. So that would have been 2000 --

2 A. Because there was a discussion about the log and
3 the information that was contained on the log, and so the
4 decision was made to make it attorney/client privilege.

15:58:41 5 Q. The entirety of the log, correct?

6 A. The entire log, correct.

7 MR. VANCE: I have no further questions.

8 THE COURT: Thank you, Mr. Vance.

9 Mr. Chandra.

15:58:48 10 MR. CHANDRA: A few, Your Honor.

11 RECROSS-EXAMINATION OF KIMBERLY ROBERSON

12 BY MR. CHANDRA:

13 Q. If, in fact, there were, in your Public Records
14 Log, confidential attorney advice regarding the Sean
15 DeCrane public records request in particular, that PR
15:59:16 15 15-2220, if such information existed, you would have been
16 fully capable of bringing it to court today, correct?

17 A. If I had been asked.

18 Q. Right. And no one asked you to, right?

15:59:39 20 MR. VANCE: Objection.

21 THE COURT: Overruled.

22 And please speak into the microphone.

23 Did anyone ask you to bring that?

24 THE WITNESS: No, no one asked me to.

15:59:48 25

1 BY MR. CHANDRA:

2 Q. So as you sit here today, you have no idea whether
3 there was any confidential information related to Sean
4 DeCrane that are part of the records of the City of
15:59:57 5 Cleveland, correct?

6 A. No, not without seeing it.

7 Q. Right. And as you sit here today, you don't know
8 whether Mr. Bardwell, in his two or three days of working
9 on addressing the public records requests backlog,
16:00:18 10 actually ever laid eyes on anything related to Sean

11 DeCrane?

12 A. Correct.

13 Q. All right. And you have no basis for -- well, let
14 me ask you, approximately in the summer of 2016, before
16:00:40 15 Mr. Bardwell started assisting you, if one were looking
16 at the public records request log -- the complete log,
17 not just excerpts -- on a computer screen, about how many
18 pages would that log go on and on at that time frame?

19 A. Just for 2015? I --

16:00:57 20 Q. No, I didn't ask about that.

21 A. Oh, okay.

22 Q. I'm just saying the entire Public Records Request
23 Log, if a law clerk were to access that, if you were to
24 access that, just at the time that Mr. Bardwell was
16:01:11 25 starting in the summer of 2016, about how many pages

1 would that screen go on and on that you'd have to page
2 through?

3 A. Depending on looking at the descriptions and so
4 forth, I'd say about three hundred pages.

16:01:28 5 Q. Okay. And it would be in pretty small font to look
6 at the whole thing on the screen?

7 A. Probably a ten font.

8 Q. And if someone were to testify that there would be,
9 you know, ten to 20,000 lines there to go through, does
16:01:47 10 that sound about right?

11 A. Possibly.

12 MR. CHANDRA: I have no further questions.
13 Thank you.

14 THE COURT: Thank you, Mr. Chandra.

16:01:57 15 Ms. Roberson, thank you very much, ma'am.
16 You can step down.

17 THE WITNESS: Thank you.

18 (Witness excused).

19 THE COURT: Okay. I believe that's it,
16:02:31 20 ladies and gentlemen.

21 I will have cross-briefs.

22 MR. CHANDRA: Your Honor, I actually wanted
23 to call Mr. Bardwell.

24 THE COURT: Not necessary. I have
16:02:40 25 everything I need. I heard him. I heard her. We're

1 done.

2 Cross-briefs due a week from today, 4:00
3 o'clock. I will specify the page limit when I think
4 about this a little bit back in my chambers.

16:02:52 5 Heard and submitted, and I'll rule as
6 quickly as I can, to move it along.

7 MR. CHANDRA: Your Honor, one request that
8 we have, if the Court would please consider it, is
9 because they bear the burden on the motion and because we
16:03:05 10 don't know what additional allegations are going to be
11 framed through the cross-brief, we ask that we be
12 permitted the opportunity to file a response brief to
13 whatever is filed rather than have cross-briefs. And
14 then, you know, we don't care if they want to reply at
16:03:17 15 that point.

16 THE COURT: I will look at the
17 cross-briefs, Mr. Chandra, and if I think I need a
18 response I will order it.

19 MR. CHANDRA: Thank you, Your Honor.

16:03:22 20 THE COURT: Heard and submitted. Thank
21 you.

22 MR. DILENO: One final request.

23 Mr. Vance is going to be out of town for a
24 few days next week.

16:03:31 25 Is there any way to get a little more --

1 MR. VANCE: This week.

2 MR. DILENO: This week, I'm sorry.

3 -- a little more time to address the
4 cross-brief issue?

16:03:39 5 THE COURT: How long are you gone for?

6 MR. VANCE: Four days, between now and when
7 it's due.

8 THE COURT: All right. I'll cut it in
9 half.

16:03:44 10 Wednesday, 4:00 o'clock.

11 MR. VANCE: Thank you, Your Honor.

12 THE COURT: Okay. We're adjourned. Thank
13 you, everyone.

14 MR. CHANDRA: Thank you, Your Honor.

16:03:49 15 THE CLERK: All rise.

16 (Proceedings concluded at 4:04 p.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Susan Trischan

/S/ Susan Trischan, Official Court Reporter

Certified Realtime Reporter

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